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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9
10 DAVID CAPLAN,

No. C06-05865 CW

11 Plaintiff,

ORDER DENYING
DEFENDANT HARTFORD'S
MOTION TO DISMISS
PLAINTIFF'S SECOND
CLAIM FOR EQUITABLE
RELIEF

12 v.

13 CNA SHORT TERM DISABILITY PLAN; CNA
14 LONG TERM DISABILITY PLAN; and
15 HARTFORD LIFE GROUP INSURANCE
COMPANY,

16 Defendants.
17 _____ /

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19 Defendant Hartford Life Group Insurance Company (Hartford)
20 moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the second
21 claim in Plaintiff's first amended complaint.¹ Plaintiff's second
22 claim is for injunctive or other equitable relief against Defendant
23 Hartford pursuant to 29 U.S.C. § 1132(a)(3). Plaintiff opposes the
24 motion. The matter was decided on the papers. Having considered
25 all of the papers filed by the parties on the motion, the Court
26 DENIES the motion to dismiss.

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¹ Because the other Defendants are not sued by Plaintiff in his
second cause of action, they are not parties to this motion.

1 BACKGROUND

2 Plaintiff David Caplan alleges that he was a participant in
3 both the CNA Short Term Disability (STD) Plan and the CNA Long Term
4 Disability (LTD) Plan (the Plans) which offered benefits to
5 employees of CNA, including Plaintiff. The Plans provided benefits
6 through an insurance policy issued by Continental Assurance Company
7 which was administered by Hartford.

8 Plaintiff alleges that he filed for short-term disability
9 benefits and Hartford denied his claim. He alleges that his
10 attorney requested review of Hartford's decision and submitted a
11 claim for long-term disability benefits.

12 Plaintiff alleges that Hartford informed him that it would
13 refer his request for review to University Disability Consortium
14 (UDC) for a comprehensive medical review of his claim. He alleges
15 that UDC has a financial conflict of interest because it relies
16 heavily on Hartford for financial gain and therefore was not a
17 neutral evaluator of his claim. Plaintiff alleges that he
18 requested that Hartford obtain a medical review from a more neutral
19 party, but that Hartford stayed with UDC which upheld its decision
20 to deny Plaintiff's claim for short-term disability benefits, and
21 therefore also denied his claim for long-term disability benefits.

22 Plaintiff brings two causes of action under the Employee
23 Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461. In
24 the first cause of action against the Plans, Plaintiff seeks
25 recovery of his plan benefits under 29 U.S.C. § 1132(a)(1)(B).
26 Plaintiff prays that the Court grant the following relief as to his
27 first cause of action:

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- 1 A. Declare that Defendant STD Plan violated the terms of
2 the STD Plan by denying Mr. Caplan's claims for
short-term disability benefits;
- 3 B. Order Defendant STD Plan to pay short-term disability
benefits to Plaintiff pursuant to the terms of the STD
Plan from March 7, 2005, through August 28, 2005,
together with prejudgment interest on each and every such
monthly payment through the date judgment is entered
herein;
- 4 C. Declare that Defendant LTD Plan violated the terms of
the LTD Plan by denying Mr. Caplan's claims for long-term
disability benefits;
- 5 D. Order Defendant LTD Plan to pay long-term disability
benefits to Plaintiff pursuant to the terms of the LTD
Plan from August 29, 2005, through the date judgment is
entered herein, together with prejudgment interest on
each and every such monthly payment through the date
judgment is entered herein;
- 6 E. Declare Plaintiff's right to continuing medical,
dental and vision benefits pursuant to the terms of the
Plans from March 7, 2005, through the date judgment is
entered herein;
- 7 F. Declare Plaintiff's right to receive future long-term
disability benefit payments under the terms of the LTD
Plan;
- 8 G. Declare Plaintiff's right to receive future medical,
dental and vision benefits under the terms of the Plans;
- 9 H. Award Plaintiff reasonable attorneys' fees and costs
of suit incurred herein pursuant to ERISA § 502(g), 29
U.S.C. § 1132(g);
- 10 I. Provide such other relief as the Court deems equitable
and just.

11 In the second cause of action against Hartford, Plaintiff
12 seeks injunctive or other equitable relief under 29 U.S.C.
13 § 1132(a)(3). Plaintiff alleges that Hartford's reliance on UDC as
14 a medical records reviewer constituted a failure to provide a full
15 and fair review of the denial of his claim, and a breach of the
16 ERISA-imposed fiduciary duty. Plaintiff prays that the Court grant
17 the following relief as to his second cause of action:

- 18 A. Declare that Defendant Hartford's use of UDC as
medical records reviewer constituted a breach of
fiduciary duty to the Plans and to Mr. Caplan;
- 19 B. Enjoin Defendant Hartford from utilizing UDC as a
medical record reviewer for a period of five years;
- 20 C. Remove Defendant Hartford as Plan Fiduciary of the

- Plans for a period of five years;
- D. Appoint an Independent Fiduciary as Plan Fiduciary of the Plans to replace Defendant Hartford for a period of five years;
- E. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- F. Provide such other relief as the Court deems equitable and just.

LEGAL STANDARD

A motion to dismiss for failure to state a claim will be denied unless it is "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132 (9th Cir. 2002) (citing Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002)). All material allegations in the complaint will be taken as true and construed in the light most favorable to the claimant. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). Furthermore, a motion to dismiss will not be granted merely because a plaintiff requests a remedy to which he is not entitled. Massey v. Banning Unified Sch. Dist., 256 F. Supp. 2d 1090, 1092 (C.D. Cal. 2003).

19 A complaint must contain a "short and plain statement of the
20 claim showing that the pleader is entitled to relief." Fed. R.
21 Civ. P. 8(a). "Each averment of a pleading shall be simple,
22 concise, and direct. No technical forms of pleading or motions are
23 required." Fed. R. Civ. P. 8(e). These rules "do not require a
24 claimant to set out in detail the facts upon which he bases his
25 claim. To the contrary, all the Rules require is 'a short and
26 plain statement of the claim' that will give the defendant fair
27 notice of what the plaintiff's claim is and the grounds on which it

1 rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

2 DISCUSSION

3 Hartford argues that Plaintiff cannot maintain his claim for
4 relief under 29 U.S.C. § 1132(a)(3) as a matter of law on the
5 ground that Plaintiff has adequate relief under 29 U.S.C.
6 § 1132(a)(1)(B). Hartford further argues that 29 U.S.C.
7 § 1132(a)(3) does not provide for the equitable relief sought by
8 Plaintiff.

9 I. Claims Under 29 U.S.C. § 1132(a)

10 Under 29 U.S.C. § 1132(a),

11 a plan participant or beneficiary may sue to recover
12 benefits due under the plan, to enforce the participant's
13 rights under the plan, or to clarify rights to future
14 benefits. Relief may take the form of accrued benefits
due, a declaratory judgment on entitlement to benefits,
or an injunction against a plan administrator's improper
refusal to pay benefits.

15 Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 53 (1987).

16 Title 29 U.S.C. § 1132(a)(1)(B) provides: "A civil action may
17 be brought - (1) by a participant or beneficiary - . . . (B) to
18 recover benefits due to him under the terms of his plan, to enforce
19 his rights under the terms of the plan, or to clarify his rights to
20 future benefits under the terms of the plan." Title 29 U.S.C.
21 § 1132(a)(1)(B) provides for relief only for the loss of past and
22 future benefits. See Mass. Mut. Life Ins. Co. v. Russell, 473 U.S.
23 134, 144 (1985). Section 1132(a)(1)(B) "says nothing about the
24 recovery of extracontractual damages." Id. However, in addition
25 to the recovery of benefits, the statute also allows the plan
26 participant to bring a civil action "to enforce his rights under
27 the terms of the plan," without reference to whether the relief

1 sought is legal or equitable. Great-West Life & Annuity Ins. Co.
2 v. Knudson, 534 U.S. 204, 221 (2002).

3 Law suits under 29 U.S.C. § 1132(a)(1)(B) can be brought
4 against the plan as an entity and against the plan's
5 administrators. Ford v. MCI Communs. Corp. Health & Welfare Plan,
6 399 F.3d 1076, 1081 (9th Cir. 2005). However, a claimant may not
7 sue the plan's insurer for additional plan benefits. Id.

8 Title 29 U.S.C. § 1132(a)(3) provides:

9 A civil action may be brought - . . . (3) by a
10 participant, beneficiary, or fiduciary (A) to enjoin any
11 act or practice which violates any provision of this
12 title or the terms of the plan, or (B) to obtain other
appropriate equitable relief (i) to redress such
violations or (ii) to enforce any provisions of this
title or the terms of the plan.

13 In Varsity Corp. v. Howe, 516 U.S. 489, 515 (1996), the Supreme
14 Court held that 29 U.S.C. § 1132(a)(3) authorizes ERISA
15 beneficiaries to bring lawsuits for "'appropriate' equitable
16 relief" for breach of fiduciary obligations, where ERISA does not
17 "elsewhere provide[] adequate relief for a beneficiary's injury."
18 It is expected "that courts, in fashioning 'appropriate' equitable
19 relief, will keep in mind the special nature and purpose of
20 employee benefit plans, and will respect the policy choices
21 reflected in the inclusion of certain remedies and the exclusion of
22 others." Id. (citations and quotations omitted). Thus, it is
23 expected "that where Congress elsewhere provided adequate relief
24 for a beneficiary's injury, there will likely be no need for
25 further equitable relief, in which case such relief normally would
26 not be 'appropriate.'" Id.

27 Section 1132(a)(3) is "a 'catchall' provision, which provides
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1 relief only for injuries that are not otherwise adequately provided
2 for." Forsythe v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir.
3 1997) (citing Varity Corp., 516 U.S. at 512). The Ninth Circuit
4 interpreted Varity Corp. to mean that equitable relief is not
5 appropriate where another subsection of section 1132(a) provides an
6 adequate remedy. Forsythe, 114 F.3d at 1475.

7 II. Adequate Remedy Under 29 U.S.C. § 1132(a)

8 Plaintiff's claim for breach of fiduciary duty under 29 U.S.C.
9 § 1132(a)(3) stems from Hartford's use of UDC as a claim reviewer
10 when UDC had an alleged conflict of interest. Hartford argues that
11 Plaintiff cannot maintain his claim for relief under 29 U.S.C.
12 § 1132(a)(3) as a matter of law because Plaintiff cannot state an
13 actionable claim under section 1132(a)(3) if he has an adequate
14 remedy for his injuries under section 1132(a)(1)(B).

15 In Varity, 516 U.S. at 511, the Supreme Court stated that the
16 "discretionary determination about whether a claimant is entitled
17 to benefits under the terms of the plan documents" constitutes a
18 "fiduciary act." Plaintiff alleges that Hartford denied him
19 benefits under the Plans due to UDC's allegedly biased review of
20 his medical records. Therefore, Plaintiff has alleged facts
21 sufficient to state a claim for a breach of fiduciary duty against
22 Hartford.

23 As noted above, Varity Corp., 516 U.S. at 515, held that
24 section 1132(a)(3) claims are permitted where the statute does not
25 "elsewhere provide[] adequate relief for a beneficiary's injury."
26 Plaintiff has alleged a cognizable claim for benefits under section
27 1132(a)(1)(B), and if he prevails, he may recover past plan

1 benefits and equitable relief that will enable him to enforce his
2 rights under the Plans. Great-West Life & Annuity Ins. Co., 534
3 U.S. at 221. Therefore, Hartford is correct that Plaintiff's
4 section 1132(a)(3) claim must be dismissed to the extent it is
5 duplicative of the section 1132(a)(1)(B) claim.

6 However, the equitable relief Plaintiff seeks under section
7 1132(a)(3), including a declaration that Hartford's use of UDC as a
8 medical records reviewer constituted a breach of fiduciary duty to
9 him and to the Plans, may be different than the relief available
10 under section 1132(a)(1)(B), and such relief might not be available
11 to Plaintiff under the section 1132(a)(1)(B) claim alone.

12 The Court concludes, therefore, that it would be premature to
13 dismiss Plaintiff's claim under section 1132(a)(3) on the basis
14 that relief is available under section 1132(a)(1)(B).

15 III. Removal Of Hartford As Claims Administrator And UDC As Medical
16 Records Reviewer

17 Hartford also argues that 29 U.S.C. § 1132(a)(3) does not
18 provide for the equitable relief sought by Plaintiff because the
19 removal of Hartford as the claims administrator and UDC as the
20 medical reviewer is not available to Plaintiff as a remedy.

21 Hartford cites Beck v. Levering, 947 F.2d 639 (2nd Cir. 1991) for
22 the proposition that drastic relief, such as that sought by
23 Plaintiff, has only been found appropriate in ERISA pension cases
24 where plan fiduciaries have stolen plan assets or engaged in
25 egregious self-dealing.

26 Citing Donovan v. Mazzola, 716 F.2d 1226, 1235 (9th Circuit
27 1983), Plaintiff argues that the court has broad discretion to

1 fashion appropriate relief for the breaches he has alleged.
2 Furthermore, Plaintiff argues that 29 U.S.C. § 1132(a)(3) does
3 provide for the relief sought.

4 At this early date in the case, the Court will not address the
5 issue of what equitable relief under 29 U.S.C. § 1132(a)(3) would
6 be appropriate.

7 CONCLUSION

8 For the foregoing reasons, Hartford's motion to dismiss
9 Plaintiff's second claim for equitable relief under 29 U.S.C.
10 § 1132(a)(3) pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED.

11
12 IT IS SO ORDERED.

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14 Dated: 3/1/07

Claudia Wilken

15 CLAUDIA WILKEN
United States District Judge